

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JEFFREY EDWARDS,

Plaintiff(s),

v.

NDOC DEPT DIR COX, et al.,

Defendant(s).

Case No. 2:13-CV-1118 JCM (GWF)

ORDER

Presently before the court is defendant Dr. Joseph Hanson's (hereinafter "defendant") motion for summary judgment. (Doc. # 17). To date, *pro se* plaintiff Jeffery Edwards (hereinafter "plaintiff") has not responded.

I. Background

This is a *pro se* civil rights action. Plaintiff was in the custody of the Nevada department of corrections and housed at High Desert State Prison (HDSP) from approximately June 22, 2012, through July 31, 2012, a period covering the time of the alleged mistreatment. Plaintiff claims that defendant failed to treat his infected wisdom tooth properly and that this failure caused plaintiff's mouth to lock up, requiring plaintiff to visit an oral surgeon outside of prison.

Beginning on or around June 24, 2012, plaintiff began making written requests ("kites") to HDSP's dental clinic to inform them of pain in his wisdom tooth. (Doc. # 17). On July 18, 2012, defendant examined plaintiff. Defendant observed that plaintiff's mouth was not swollen, had no limited opening, was not forming puss, and was not infected. On the same visit, plaintiff signed a written consent form for the extraction of his wisdom tooth, which spelled out the common risks of the surgery, and plaintiff's tooth was extracted. (Doc. # 17).

1 On July 23, 2012, plaintiff returned to the dental clinic with symptoms of a beginning
2 post-operation infection and was treated by Dr. Sanders. Dr. Sanders prescribed antibiotics for
3 plaintiff's infection. (Doc. # 17).

4 On July 31, 2012, plaintiff returned to the dental clinic with signs of severe swelling.
5 The infection was not responding to the antibiotics. As a result, Dr. Hanson transferred plaintiff
6 to University Medical Center ("UMC") for further evaluation and treatment.

7 On December 18, 2013, plaintiff filed his complaint pursuant to 42 U.S.C. § 1983. (Doc.
8 # 6). Plaintiff filed an amended complaint on December 30, 2013. (Doc. # 7). Pursuant to a
9 screening order, plaintiff has been permitted to proceed on one claim alleging deliberate
10 indifference against defendant. (Doc. # 8). Defendant now moves for summary judgment.

11 **II. Legal Standards**

12 *A. Summary judgment*

13 Pursuant to Local Rule 7-2(d), an opposing party's failure to file a timely response to any
14 motion constitutes the party's consent to the granting of the motion and is proper grounds for
15 dismissal. LR 7-2(d). A court cannot, however, grant a summary judgment motion merely
16 because it is unopposed, even where its local rules might permit it. *Henry v. Gill Indus., Inc.*,
17 983 F.2d 943, 949-50 (9th Cir. 1993); *see also Martinez v. Stanford*, 323 F.3d 1178, 1182 (9th
18 Cir. 2003) (a district court cannot grant a motion for summary judgment based merely on the fact
19 that the opposing party failed to file an opposition).

20 Even without an opposition, the court must apply standards consistent with Federal Rule
21 of Civil Procedure 56, determining if the moving party's motion demonstrates that there is no
22 genuine issue of material fact and judgment is appropriate as a matter of law. *Henry*, 983 F.2d at
23 950. *See also Clarendon Am. Ins. Co. v. Jai Thai Enters., LLC*, 625 F. Supp. 2d 1099, 1103
24 (W.D. Wash. 2009).¹

26 ¹ "[S]ummary judgment cannot be granted by default, even if there is a complete failure to
27 respond to the motion." Fed. R. Civ. P. 56, 2010 cmt. to subdivision (e). The court may only
28 grant summary judgment if "the motion and supporting materials . . . show that the movant is
entitled to it." Fed. R. Civ. P. 56(e).

1 The Federal Rules of Civil Procedure provide for summary adjudication when the
2 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
3 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant is
4 entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of
5 summary judgment is “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v.*
6 *Catrett*, 477 U.S. 317, 323-24 (1986).

7 In determining summary judgment, a court applies a burden-shifting analysis. “When the
8 party moving for summary judgment would bear the burden of proof at trial, it must come
9 forward with evidence which would entitle it to a directed verdict if the evidence went
10 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the
11 absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp. Brokerage*
12 *Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted).

13 By contrast, when the nonmoving party bears the burden of proving the claim or defense,
14 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an
15 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
16 party failed to make a showing sufficient to establish an element essential to that party’s case on
17 which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323-24. If
18 the moving party fails to meet its initial burden, summary judgment must be denied and the court
19 need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S.
20 144, 159-60 (1970).

21 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
22 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
23 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
24 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
25 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’
26 differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*,
27 809 F.2d 626, 631 (9th Cir. 1987).

28 . . .

1 *B. Deliberate indifference*

2 Under the Eighth Amendment to the United States Constitution, a prisoner has the right
3 to be free from “cruel and unusual punishments.” U.S. Const. amend. VIII. The Constitution
4 “does not mandate comfortable prisons,” but it does require that prisoners receive “adequate
5 food, clothing, shelter, and medical care” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)
6 (internal quotations omitted).

7 Alleged denials of medical care are subject to a two-part “deliberate indifference”
8 analysis. *See Farmer*, 511 U.S. 825; *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). First,
9 “the deprivation alleged must be, objectively, ‘sufficiently serious.’” *Farmer*, 511 U.S. at 834.
10 The inmate must show that he is incarcerated “under conditions posing a substantial risk of
11 serious harm.” *Id.*

12 Second, the plaintiff must demonstrate that the defendant had a subjectively “sufficiently
13 culpable state of mind,” acting with deliberate indifference. *Id.*; *Hearns v. Terhune*, 413 F.3d
14 1036, 1040 (9th Cir. 2005). “[D]eliberate indifference entails something more than mere
15 negligence . . . [but] is satisfied by something less than acts or omissions for the very purpose of
16 causing harm or with knowledge that harm will result.” *Hearns*, 413 F.3d at 1040 (quoting
17 *Farmer*, 511 U.S. at 835).

18 To establish a claim for deliberate indifference to medical needs in the Ninth Circuit, a
19 plaintiff must show: (1) a “serious medical need by demonstrating that failure to treat a
20 prisoner’s condition could result in further significant injury or the unnecessary and wanton
21 infliction of pain,” and (2) that the defendant’s response to the need was deliberately indifferent.
22 *Jett*, 439 F.3d at 1096 (internal citations omitted).

23 “Mere negligence in diagnosing or treating a medical condition, without more, does not
24 violate a prisoner’s Eighth Amendment rights.” *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th
25 Cir. 2004) (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992)). Finally, delaying
26 medical treatment, without more, is insufficient for a deliberate medical indifference claim;
27 plaintiff must demonstrate that the delay was harmful. *Shapley v. Nevada Bd. of State Prison*
28 *Com’rs*, 766 F.2d 404, 407 (9th Cir. 1985).

III. Discussion

Plaintiff would bear the burden of proving defendant's deliberate indifference at trial. Therefore, for summary judgment to be appropriate, defendant must first prove that plaintiff failed to show an essential element of deliberate indifference. If he succeeds in showing this, the burden would then shift to plaintiff to show that a genuine dispute of material fact exists. Because plaintiff failed to respond to defendant's motion, the court must evaluate the evidence to determine whether the standard has been satisfied.

To prove deliberate indifference, plaintiff must first prove a sufficiently serious deprivation of medical care. The evidence does not support such a finding. Plaintiff's requests for medical care were addressed within a reasonable period of time. Once defendant examined plaintiff, he responded accordingly, removing plaintiff's tooth, providing him with follow-up treatment, and referring him as necessary. Any deprivation of medical care was not sufficiently serious to warrant a finding of deliberate indifference.

Plaintiff has also failed to prove that defendant acted with deliberate indifference greater than negligence. Neither party presents any facts supporting such a finding. As stated above, it appears that defendant acted in accordance with accepted medical standards and responded appropriately to plaintiff's condition. Therefore, this element is not met.

Because defendant has shown that plaintiff fails to meet the essential elements of deliberate indifference, the burden would then shift to plaintiff to show that a genuine dispute of material fact exists. The court does not find any dispute of material fact in the instant case. The only potential discrepancy between plaintiff's and defendant's accounts of the relevant facts is whether plaintiff's tooth was infected at the time of his initial examination. Plaintiff alleges that the extraction defendant performed caused an existing infection to spread. (Doc. # 7). This would not cure plaintiff's failure to allege a sufficiently serious deprivation of medical care or deliberate indifference. Therefore, it is not material and cannot preclude the court from granting summary judgment.

Overall, the evidence does not support a finding of deliberate indifference, and no genuine dispute of material fact exists in the case. Plaintiff has not shown that defendant acted

1 with a “culpable state of mind” greater than negligence. The evidence before the court
2 demonstrates that defendant treated plaintiff in accordance with the usual standards of medical
3 care. Plaintiff does not dispute that his tooth was extracted, that he was provided with
4 antibiotics, or that he was referred to an outside provider when his condition worsened. Further,
5 the undisputed facts do not support a finding of a sufficiently serious deprivation of medical care.
6 For these reasons, defendant’s motion for summary judgment will be granted.

7 Because the court finds that plaintiff cannot show a violation of a constitutional right
8 under 42 U.S.C. § 1983, the court need not address defendant’s argument that he is entitled to
9 summary judgment on the basis of qualified immunity.a

10 **IV. Conclusion**

11 Accordingly,

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant’s motion for
13 summary judgment (doc. # 17) be, and the same hereby is, GRANTED.

14 IT IS FURTHER ORDERED that the clerk of the court enter judgment in favor of
15 defendant and close this case.

16 DATED August 25, 2014.

17 
18 UNITED STATES DISTRICT JUDGE